IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS NOS. 12678, 13383, 13384, 13385, 13386 ALL OF 2000 AND 98, 149, 151, 234 AND 1189 ALL OF 2001

with

CIVIL APPLICATIONS NOS. 1533, 1534, 1536 TO 1538 ALL OF 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMCHANDRA ART SILK YARN

Versus

UNION OF INDIA

Appearance:

MR BP MUNSHI for Petitioner

MR PARESH M DAVE for Petitioner

MR AKSHAY H MEHTA for Respondent No. 1

MR ASIM J PANDYA for Respondent No. 2, 3, 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision:04/04/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. In these Writ Petitions, a common challenge is made to the constitutional validity of Section 151A of the Customs Act, 1962 (for short `the Act') and three Circulars described as Standing Orders issued thereunder by the Chief Commissioner of Customs, Mumbai, directing the method to be followed for valuation of plastic items, non-ferrous metal scrap, polyester chips, POY, PFY, PSF, acrylic fibre, viscose staple fibre and silk, for the purpose of assessment of customs Duty.

#. Special Civil Applications Nos. 13383, 13384 both of 2000 and Special Civil Applications Nos. 149, 151, 234 all of 2001 are concerning valuation of Customs Duty on plastic items. Special Civil Applications Nos. 13385, 13386 both of 2000 and Special Civil Applications Nos. 98 and 1189 both of 2001 are in relation to assessment of value of non-ferrous metal scrap and Special Civil Application No. 12687 of 2000 is concerning polyester chips, POY, PFY, PSF, acrylic fibre etc. A common judgment and order is being passed on these Applications, as this Court is concerned only with the challenge made to the constitutional validity of the provisions of Section 151A and the power of the Chief Commissioner of Customs to issue the impugned Standing Orders to its subordinate assessing Authorities on the question of assessment of value of various items for imposing Customs Duty. The impugned Circulars styled as Standing Orders in respect of plastic items are No. 7493 of 1999 dated 3-12-1999, in case of non-ferrous metal scrap No. 7495 of 1999 dated 13-12-1999 and in case of items like polyester chips, POY, PFY, PSF, acrylic fibre etc. No. 7514 of 2000.

#. By the impugned Standing Order No. 7493 of 1999 with regard to valuation of plastic items, the direction issued by the Chief Commissioner of Customs is that the assessing Officer should apply what is described as PLATT rate, which is explained as rates or prices maintained in the internationally reputed finance Journals, like LME Bulletin, PLATT's Weekly Report etc. The Standing Order on plastic items gives detailed guidelines and directions how the valuation of the plastic items are to be made

with regard to international prices contained in the Foreign Finance Journals and keeping in view the method and manner in which the goods are imported. With regard to the non-ferrous metal scrap, the impugned Standing Order No. 7495 dated 13-12-1999 issues direction that "the assessment of virgin as well as all metal scraps appearing in Metal Bulletin shall be done on the basis of average (mean) prices quoted in Metal Bulletin (a journal published from London, U.K.). As Metal Bulletin reflects the F.O.B. prices, element of freight and insurance at appropriate rate shall be added to Metal Bulletin prices to arrive at CIF prices for levy of Customs Duty. The other details of the Standing Order which provide detailed guidelines for assessment need be discussed in detail. The Standing Order directs the assessing Authorities that for assessment of value of metal scrap prices which are found quoted in Metal Bulletin, i.e., an international journal published from London (U.K.), should be applied and other scraps are to be valued in accordance with another Standing Instruction/Circular dated 9-12-1999. The third impugned Circular on items like polyester chips, acrylic fibres and others also directs the Customs Authorities to take into account the international rates of such items as the basis for assessment of value for Customs Duty. In the said Standing Order No. 7514 of 2000 detailed guidelines have been provided for valuation of various items like polyester chips, POY, PFY, PCF, acrylic fibre etc. The principal submission advanced by Mr. Dave and Mr. Munshi, learned counsel for the petitioners is that the valuation of the goods for the purpose of Customs Duty has to be made strictly on the basis of the `transaction value' disclosed by the importer in accordance with Section 14 read with Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (for short `the Rules'). It is submitted that Rule 3 of the Rules provides method of valuation on the `transaction value', i.e., price actually paid or payable for the goods. It is contended that the Customs Authorities, while assessing the value of the goods for the purpose of Customs Duty, discharge quasi-judicial functions and their discretion and power, to assess the value for levy of Customs Duty, cannot be regulated, restricted or directed in a particular way, by issuance of Standing Orders by the higher Authorities. By issuing the Standing Orders, the Chief Commissioner of Customs has, in fact, encroached upon the power and quasi-judicial functions of the assessing Authorities. Such Standing Orders, in the nature of mandates, are outside the powers conferred on the Chief Commissioner of Customs under Section 151A of the Act. It is also submitted that such

Standing Orders issued are clearly in contravention of Section 14 of the Act and the Rules which elaborately lay down the method of valuation of goods for assessment of Customs Duty. Alternatively, on behalf of the petitioners, it is contended that if power to issue such Standing Orders or directions are held to be authorised by provisions of Section 151A of the Act, then the said Section is ultravires the Constitution, being violative of Article 14 of the Constitution of India. The valuation of imported goods of the same type and variety are required to be assessed on the basis of the nature of the transaction involved and the price paid or payable on the imported goods. Such assessment has to be strictly made in accordance with Section 14 read with the Rules. The impugned Standing Orders are not in accordance with law, as a uniform method of valuation of particular types of goods based only on the international prices declared in international journals could not be prescribed and insisted upon. Goods imported in various freight conditions cannot be subjected to same rate of Customs Duty. Strong reliance is placed on the decision of the Supreme Court in the case of B. Rajagopala Naidu vs. The State Transport Appellate Tribunal, Madras and others AIR 1964 SC 1573, Orient Paper Mills Limited v. Union of India AIR 1969 SC 48, Orient Paper Mills vs. Union of India AIR 1970 SC 1498 and Eicher Tractors Limited v. Commissioner of Customs, Mumbai 2000 (122) ELT 321(SC).

#. In meeting the challenge to the constitutional validity of the provisions of Section 151A and supporting the validity of the impugned Standing Orders issued thereunder, Shri Asim Pandya, learned counsel for the Union of India reiterates the stand taken in their affidavit-in-reply. It is stated that -

> "The impugned Standing Order was issued for smooth functioning of the assessment and examination work and to bring about the uniformity in the work. This was also meant for avoiding undue hardship and harassment to the trade and to avoid allegation of discriminatory treatment in different Customs Commissionerates. The Standing Order is just in the nature of guidelines to streamline the functioning of the custom officers at various field formations. If the Standing Order is read, it is necessary to note that it has prescribed only pattern of assessment and it does not, in any way, interferes with the discretion of the officers."

#. In reply to the submission that the `transaction

value' disclosed in the import documents would be only relevant and decisive, on behalf of the Union of India, reliance is placed on the decision of Supreme Court in case of M/s. Shivani Engineering System 1996 (86) ELT 453 (SC). It is submitted that where the transaction value is ridiculously low and unrealistic of goods imported from a trader and when a price list of a manufacturer is not produced, goods can be assessed on the basis of the contemporaneous imports. Instances of contemporaneous imports may not always be available with the Customs. Therefore, information of international price at which such or like goods are ordinarily sold or offered for sale can be ascertained through reputed finance journals like LME Bulletin, PLATT's Weekly Reports etc. It is submitted that in the case of Mukund Limited, 1999 (107) ELT 653, it was held that LME Bulletin price can be considered to be fair indicator of prevailing market price. The price under Section 14 is not a negotiated price, but deemed price prevailing in the general international market conditions of supply and demand. Hence, on the same reasoning, PLATT's price is also a fair indicator of correct international price for the purpose of Section 14 of the Customs Act.

#. In the reply affidavit of the Union of India, reference is made to decision of the Tribunal in the case of M/s. Plast Fab, 1993 (66) ELT 441 in which it has been held that price paid or payable in respect of any goods would not represent the transaction value under Rule 4 of the Customs Valuation Rules, 1988, if it does not reflect the price at which such or like goods are sold at the time and place of importation. In the absence of contemporaneous imports at higher price, the transaction value, i.e. price actually paid or payable may not always be accepted as assessable value and it would be relevant to find its prevailing value in the international market as disclosed in Foreign Finance Journals. For deciding the question of validity of the provisions of the Act and the Standing Orders, relevant provisions contained in Section 14, Rules 3 and 4 of the Valuation Rules, 1988 are required to be examined. Section 14 reads thus:-

"Section 14. Valuation of goods for purposes of assessment. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a Duty of Customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for

sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale of offer for sale:

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46 or a shipping bill or bill of export, as the case may be, is presented under Section 50;

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the Duty shall be chargeable with reference to such tariff value.

(3) For the purpose of this Section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Section 14 provides that for the purpose of assessment to Customs Duty "the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale of offer for sale.

#. From the provisions of Section 14 what is to be noticed is that in a case of assessment to Customs Duty, the relevant enquiry before the assessing Authority is for finding out the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade. The international trade and the price in the trade, therefore, is relevant for the purpose of determining the price of the goods imported under the transaction. The `transaction value' disclosed by the party is, therefore, not always decisive. To ascertain the price of like goods in ordinary sale in international trade is a relevant part of the enquiry. The Assessment Rules of 1988 had to be read consistently with the provisions of Section 14. Rules cannot be read in the manner as would result in conflict with the provisions of Section 14. Section 14 contains the method and manner of determination of value of goods imported for levying Customs Duty.

#. Rule 3 reads:

"3. Determination of the method of valuation.
For the purpose of these rules, -
(i) the value of imported goods shall be the transaction value;
(ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules."

Rule 4 which is referable to sub-rule (i) of Rule 3 defines `transaction value' to be the price actually paid or payable for the goods, when sold for export. The transaction value of identical goods as explained in Rule 5, is the value of identical goods sold for export to India and imported on or about the same time as the goods being valued. Under sub-rule (1)(b) of Rule 5 transaction value of identical goods is the value at the commercial level and substantially of the same quantity. It is for purposes of Rule 5 and Rule 6 that the price of the goods as found quoted and maintained in the foreign financial journals becomes relevant.

#. Since this Court is not directly concerned with the determination of value for assessment of the Customs Duty which is a subject matter exclusively within the domain of Customs Authority, it does not find necessary to go into that aspect in any further details. The provisions

of the Act and the Rules are being examined by us only for the limited purpose of finding out whether the directions or guidelines issued in the impugned Standing Orders are in any manner contrary to the provisions of law and result in taking away power and discretion of the assessing Authorities. It is enough for our purposes to state that in a given individual case, the Authorities might find the `transaction value' as not genuine or reflecting the real value of such goods comparable with the price of such goods when ordinarily sold or offered for sale at the same time and place in the course of import. It is not in all cases that the `transaction value' is to be accepted by the Customs Authorities as determinative of the value for Customs Duty. If the transaction value is found to be ridiculously low or not acceptable on other relevant consideration such as parties being related, the enquiry with regard to international prices of such goods becomes relevant and sometimes necessary. It is for the purpose of determination of international price that the Standing Orders contain the relevant guidelines. Two decisions of Supreme Court one in case of M/s. Shivani Engineering Systems (supra) and the latest decision in Eicher Tractors Ltd. (supra) have been brought to the notice of this Court by the Union of India and the petitioners respectively. It is pointed that in the latest decision of Supreme Court in Eicher Tractors (supra) the provisions of Section 14 and the Assessment Rules have been construed. It has been held that exceptions specified in Rule 4(2) of the Assessment Rules are in explicatory of the special circumstances in Section 14(1) quoted earlier. It has been held that unless the price actually paid for the particular transaction falls within the exceptions, the Customs authorities are bound to assess the Duty on the transaction value. The submission made on behalf of the Revenue is that the "transaction value" read in conjunction with the word "payable" in Rule 4(1) allows determination of the ordinary international value of the goods to be ascertained on the basis of data other than the price actually paid for the goods. The Supreme court in the case of Eicher Tractors Limited (supra) has to be understood reasonably.

##. In the case of M/s. Shivani Engineering Systems (supra) Supreme Court held that where `transaction value' is rejected on relevant grounds either being ridiculously low or unrealistic, instances of contemporaneous imports if not available with the Customs Authorities, the international price at which such or like goods are ordinarily sold or offered for sale can be ascertained through reputed Foreign Finance Journals.

##. We need not go into greater detail of the ratio of two decisions of the Supreme Court in the case of Eicher Tractors and M/s. Shivani Engineering (supra), because we are not directly concerned with the determination of the value of the items imported for levy of Customs Duty. We, however, find no inconsistency between the two decisions of the Supreme Court. What we have found from the examination of the provisions of the Act and the Rules is that while determining the value of the imported goods for Customs Duty both `transaction value' and sometimes the value as disclosed in the international trade and market through Foreign Finance Journals become relevant.

##. Section 151A authorises the Board or its Delegate, i.e., Chief Commissioner of Customs to issue instructions to Officers of Customs for the purpose of maintaining uniformity in the classification of goods and levy of Duty thereon. Section 151A with proviso thereunder is reproduced for ready reference:-

"Section 151A. Instructions to officers of Customs. - The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of Duty thereon, issue such orders, instructions and directions to officers of Customs as it may deem fit and such officers of Customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued -

(a) so as to require any such officer of Customs to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner of Custom (Appeals) in the exercise of his appellate functions."

##. What is to be noticed from the above quoted provision is that it authorises the Board and its delegate to issue instructions for the purpose of uniformity in classification of goods for levy of Duty. The directions or guidelines issued by the Board or its delegate are not to be treated as taking away the quasi-judicial power of the Customs Authorities to deal with a particular transaction at a particular place. A proviso has been added which clearly lays down that there

would be no power to issue directions, orders and instructions as would require any such Officer of Customs to make a `particular assessment or to dispose of a particular case in a particular manner'.

##. In challenging the impugned Standing Orders issued in purported exercise of powers under Section 151A, heavy reliance has been placed on the decision of Orient Paper Mills (supra) AIR 1969 SC 48 which was concerning similar kinds of directions issued under the Central Excise and Salt Act. In declaring the directions as invalid and vitiating the proceedings of assessment, the Supreme Court observed:

> "If the exercise by the Collector was a quasi judicial power - as we hold it to be - that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the Appellate authorities in the matter of deciding disputes between the persons who are called upon to pay Duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved party. The only provision under which the Board can issue directions is Rule 233 of the Rules framed under the Act. That rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of these Rules. Under this rule the only instruction that the Board can issue is that relating to administrative matters; otherwise that rule will have to be considered as ultra vires Section 35 of the Act."

##. What is to be noted from the above observations of the Supreme Court is that in that case under the Central

Excise Act and the Rule 233 framed thereunder the Board and the Collectors were empowered to issue instructions providing for common supplemental matters arising out of the Rules. It is on the language of that Rule 233 that it was held that the Board is empowered only to issue instructions relating to administrative matters and cannot arrogate itself the power of encroaching upon the quasi judicial function of the Excise Authorities dealing with individual cases for determining the excise Duty. The case of Orient Paper Mills (supra) was followed by Supreme Court subsequently in the case of same party (AIR 1970 SC 1498) and is also a case under the Central Excise and Salt Act, where no provision analogous to Section 151A, as is found in Customs Act, exists. The instructions were struck down by the Supreme Court in the subsequent decision of Orient Paper Mills (supra), because the assessment for levy of excise Duty was made by the lower authority on the instructions of the Collector to whom the Appeal lay against the order of the Subordinate Officer. That was clearly a case where Appellate Authority interfered with the judicial functions of the assessing Authority which was subordinate to him. Such is not the case here. The decision in B. Rajagopala Naidu (supra) AIR 1964 SC 1578 of the Supreme Court was concerning the validity of Government Order issued under Section 43A of the Motor Vehicles Act. By the order issued under Section 43A of the Motor Vehicles Act, pending appeals before the Appellate Authority of the operators for grant of stage carriage permits were directed to be decided on certain laid down principles and criterion. The disposal of those Appeals on the basis of general order of the Government of Madras came to be challenged on the ground that there was clear encroachment by the Government on the quasi judicial powers of the Appellate Authority. By impugned direction issued, the Authorities were directed to issue only temporary permits, as Government intended to nationalise motor transport. There were also other directions in the order. Section 43A was inserted by Madras Legislature in the Central Act, i.e., Motor Vehicles Act to clothe the State Government with powers to issue orders and directions. Section 43 empowered the State Government to issue only orders and directions of a general character, as it may consider necessary, in respect of any matter relating to road transport. The State Transport Authority or Regional Transport Authority, and such transport Authorities were bound to give effect to all such orders and directions. Construing the language of Section 43A, the Supreme Court held that the provision intends to empower the Government to issue orders and directions of a general character

only in respect of administrative matters, which fall to be dealt with by the State Transport Authority or the Regional Transport Authority, under the relevant provisions of the Act in their administrative capacity. In construing the language of Section 43A, the Supreme Court came to the following conclusion:

"In interpreting S. 43A, we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi-judicial function the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such letters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunals in dealing with the said matters. The scope ofthe jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders."

##. What is to be noticed is that Section 43A of the Motor Vehicles Act, as introduced by amendment by Madras Legislature, which came up for consideration before the Supreme Court in the case of Rajagopala Naidu (supra) is not analogous or comparable to Section 151A of the Customs Act with which we are dealing in this case. As is clear from the opening part of Section 151A, the Board

and it's delegate has been empowered to issue orders, instructions and directions for the purpose of uniformity in the classification of goods or levy of Duty. The purpose of such conferment of power is benevolent that is to avoid discriminatory treatment to same or similar goods imported in similar conditions, by levying different amounts of Duty. The legislative purpose, therefore, is to avoid discrimination rather than permitting it. The contention based on Article 14 of the Constitution of India has no merit.

##. The other submission made on behalf of the petitioners, not on the validity of Section 151A, but on the validity of the impugned Standing Orders, appears to be of some force. By issuance of Standing Orders or directions, the quasi-judicial discretion and power of the Assessing Authority in each individual case cannot be taken away. To guard against possibility of directions and instructions issued under Section 151A to cause that that malevolent effect, proviso (a) has been added which prohibits issuance of any orders, instructions and directions, `as would require any Officer of Customs to make particular assessment or to dispose of a particular case in a particular manner'. The intention of Legislature by proviso (a) below Section 151A is very clear that the power of issuing instructions or directions by the Board or its delegate should not be exercised in a manner as to interfere with the power and discretion of the Customs Authorities in deciding a particular case for assessment before it.

##. The real difficulty which has arisen in the case of three impugned Standing Orders is that their language is not in the nature of a guideline or instruction but a command or a mandate. The language of the three Standing Orders is likely to create an impression in the mind of the Customs Authorities that irrespective of the peculiarities of a case and the transaction value involved, they have no option, but to assess value by applying the international price declared in the Foreign Finance Journals. The next question is whether it would be necessary to strike down all of them. In our considered opinion, the three Standing Orders are not bad in their entirety. They contain valuable guidelines for determining the price of imported articles for subjecting them to Custom Duty. In cases, where the `transaction value' is not determinative, the international price as disclosed in Foreign Finance Journals becomes relevant. The provisions of the Act and the Rules are exhaustive enough to regulate the exercise of power and discretion by the Customs Authorities. Merely, because there are

elaborate provisions in the Act and the Rules, standards and guidelines which structure the exercise of power and discretion in a way which nevertheless allows the circumstances of particular cases to be taken in to account, cannot be held to be impermissible under Section 151A of the Act. The Standing Orders impugned before us are liable to be sustained by reading them down as not rigid directions or mandates, but only as instructions containing flexible guidelines. Flexible standards are required to be laid down for the purpose of achieving uniformity in levying Customs Duty on articles and items of similar nature imported in similar conditions. Such standards or guidelines gradually develop in the course of exercise of powers. They are sometimes necessary to structure the exercise of statutory and discretionary power. They are very useful and beneficial provided they are not followed rigidly so as to exclude the essence of power and discretion and do not take away the readiness and willingness of the concerned Officer to deal with each case on its merits. A just and efficient method of tax recovery requires a concerted pursuit in non-discriminatory manner. That requires a mix of freedom for and control of "functionaries" by those in charge.

##. A caution has, however, to be recorded that in exercise of powers under Section 151A the Board or its delegate should not be allowed to pursue consistency at the expense of the merits of individual cases.

##. As a result of the discussion aforesaid, the challenge to the constitutional validity of Section 151A of the Customs Act made by the petitioners fails. The Petitions are partly allowed so far as the challenge against the three impugned Standing Orders is concerned. The three impugned Standing Orders are not liable to be struck down, but they are to be read down by the concerned Customs Authorities purely as instructions or guidelines and not mandates or commands for being obeyed in each individual case of assessment before them. The Standing Orders are to be taken only as assistance in exercise of their quasi-judicial power of determining value for the purpose of levy of Customs Duty.

##. During the pendency of these Petitions, by interim orders, we had directed the petitioners to be provisionally assessed on the imported goods. The interim orders are now vacated and the Customs Authorities may now regularly assess the petitioners on the goods imported by them for Customs Duty. Rule in each case is made absolute to the aforesaid extent.

All the Civil Applications filed in respective Special Civil Applications are accordingly disposed of.

In view of partial success of these Petitions, we leave the parties to bear their own costs.

(D.M. DHARMADHIKARI, C.J.)

(P.B. MAJMUDAR, J)

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